

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**912 WRIT PETITION NO. 2709 OF 2015
WITH CA/11497/2018 IN WP/2709/2015**

THE DIVISIONAL CONTROLLER, MAHARASHTRA STATE ROAD
CORPORATION, BEED

VERSUS

MEENA SANJAY BAWALE AND OTHERS

...

Advocate for Petitioner : Shri. D. S. Bagul

Advocate for Respondents : Shri. S. J. Salunke

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 28th NOVEMBER, 2018.

PER COURT :

1. RULE. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner MSRTC is aggrieved by the order dated 12.09.2014, passed by the Motor Accident Claims Tribunal, Beed, by which, application Exh.21 filed by the MSRTC under Order-I Rule 10 of the CPC, seeking addition of the owner of the accident car and the Insurance Company as defendants, has been rejected.

3. Having considered the strenuous submissions of the learned advocates for the respective sides and in view of the order that I would be passing, I am not required to advert to their entire submissions.

4. The impugned order dated 12.09.2014 reads as under :

*“ Perused application and say. It's choice of claimant.
Moreover negligence and contribution is a matter of
evidence so application rejected”
(reproduced verbatim)*

5. I have perused Rules 259 and 260 of the Maharashtra Motor Vehicles Rules, 1989. Rule 259 pertains to a summary disposal of the application. The Claims Tribunal can examine an application for compensation and within 14 days from its receipt, it can consider the discrepancies occurring therein and by calling upon the advocate concerned to remove the discrepancies within 14 days, the Tribunal can entertain the application. If the advocate fails to remove the discrepancies within 14 days of the publication or display of the notice, such application can be dismissed summarily.

6. Rule 260 reads as under :

Notice to the parties involved – (1) If the application is not dismissed under Rule 259, the Claims Tribunal shall, send to the owner or the driver of the vehicle or both involved in the accident and its insurer, a copy of the application, and the annexures thereto together with the notice of the date

on which the parties shall enter their appearance either in person, or through their duly authorized agents, and may also file their written statement, if any, with additional copies of the same, for being furnished to the other parties connected with the matter. It will dispose off the application, and may call upon the parties to produce on that date any evidence which they may wish to tender.

(2) The service of the notice shall be effected on the owner, the driver and the insurer of the vehicle in question, as the case may be, by way of personal service, through the bailiff or by Registered Post A/D or both.

(3) Where the applicant makes a claim for compensation under Section 140, the Claims Tribunal shall give notice to the owner and insurer, if any, of the vehicle involved in the accident directing them to appear on the date, not later than fifteen days from the date of issue of such notice. The date so fixed for such appearance shall also be not later than fifteen days from the receipt of the claim application filed by the claimant. The Claims Tribunal shall state in such notice that in case they fail to appear on such appointed date, the Claims Tribunal shall proceed ex parte on the presumption that they have no contention to make against the award of compensation.

7. It is not in dispute that on the fateful day, the car driven by the husband of the claimant respondent no.1, is said to have been involved with an accident with a MSRTC passenger bus, resulting in the death of the driver. It is now informed that even the owner of the vehicle has passed away. Rule 260 requires that the Claims Tribunal will issue notice to the owner or driver of the vehicle or both involved in the accident and also to the insurer.

8. This court has considered a somewhat similar issue in the matter of *New India Insurance Company Limited Vs. Suman Bhaskar Pawar and others*, 1020(1) Bom.C.R. 319, in which, this Court set aside the judgment of the Tribunal and remanded the matter for conducting a de novo trial after issuing notices to the owner and driver of the vehicle. The Aurangabad Bench of this Court has considered similar issues in Writ Petition No.1896 of 2012, decided on 18.04.2012 and in the matter of Maharashtra State Road Transport Corporation, Beed Vs. Anjali Ramesh Salunke and others, Writ petition No. 10711 of 2012, decided on 14th February, 2013, by which, the driver and the owner was directed to be added and the Tribunal was directed to issue notices.

9. Learned advocate for the petitioner submits that since the driver and the insurer have passed away, ends of the justice would be met if the Insurance Company is added as a respondent. Learned advocate for the respondent claimants submits that for a small issue involved in this matter, the proceedings have got stayed in view of the order passed by this Court on 21.06.2015. The claimants are willing to add the Insurance Company as a respondent and the matter be expedited.

10. In view of the above, the impugned order dated 12.09.2014 is quashed and set aside. Application Exh.21 is partly allowed.

11. The claimants shall add the Insurance Company mentioned at serial No.2 in Exh.21, within three weeks from today. The Tribunal shall issue notice to the Insurance Company.

12. The Tribunal shall ensure that the Insurance Company is directed to file its written statement expeditiously and, in any case, on or before 15.02.2019. Thereafter, the Tribunal shall consider the claim petition on its merits by following the due procedure and shall decide the

said proceedings on or before 31st October, 2019.

13. Rule is made partly absolute in the above terms.

14. Pending civil application does not survive and stands disposed of.

(RAVINDRA V. GHUGE, J.)

vsm/-